



DEPARTMENT OF VETERANS AFFAIRS

PRIVACY ACT OF 1974; SYSTEM OF RECORDS

AGENCY: Department of Veterans Affairs (VA), VACO FOIA Service.

ACTION: Notice of a modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, all agencies are required to publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled “Freedom of Information Act (FOIA) Records-VA” (119VA005R1C).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the Federal Register. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the Federal Register. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue, NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to “Freedom of Information Act (FOIA) Records – VA” (119VA005R1C). Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: James Killens III, Acting Director, VA FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-7233.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA) was enacted on July 4, 1966 and is a statutory law requiring Federal agencies to provide to the fullest extent possible release of agency information to the public, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The law provides individuals with a statutory right of access to certain federal agency records. FOIAXpress (FX) is the official VA mandatory FOIA tracking system. The FX System automates the FOIA business process for all FOIA requests received at the various VA departmental FOIA offices. FX is designed specifically to automate FOIA and Privacy Act (PA) request case processing, including request tracking and management, document management, electronic redaction, fee management and invoicing, and annual reporting. FX provides compliance with FOIA/PA regulations with a powerful application that will provide VA with a tool that will transform FOIA/PA processing from a cumbersome, manual process to an automated, electronic one. The FX system processes FOIA request data received by FOIA users. FOIA data consists of requests for information received from the public which includes personal identification information and financial information related to the processing of FOIA request.

As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is adding a function to an existing system of records entitled "Freedom of Information Act (FOIA) Records-VA" (119VA005R1C). The amended system of records has added the Public Access Link (PAL). PAL is a public facing webpage with a separate URL. PAL allows the requester to electronically submit their FOIA requests via a public facing website which links directly into the FX system. PAL will streamline the VA's FOIA intake process as it permits the requester to input their contact information, select requesters' category for fee purposes, select the

appropriate VA office, receive a FX tracking number (case number), and generate a FOIA acknowledgement letter as mandated by law.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Neil C. Evans, M.D., Chief Officer, Connected Care, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on October 6, 2021 for publication.

Dated: November 12, 2021.

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SYSTEM NAME AND NUMBER: Freedom of Information Act (FOIA) Records-VA

(119VA005R1C)

SECURITY CLASSIFICATION: Unclassified

SYSTEM LOCATION: Records are maintained at the VA Central Office FOIA Offices, 810 Vermont Avenue, NW, Washington, DC 20420; AINS, Inc., 1355 Piccard Drive, Rockville, MD 20850, and all VA field facilities. A list of the field facilities may be found at the following Internet address: <https://www.va.gov/directory/guide/home.asp>.

SYSTEM MANAGER(S): James Killens III, Acting Director, VA FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-7233.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: Includes the following with any revisions and amendments: The Privacy Act of 1974 (5 U.S.C. § 552a); the Freedom of Information Act, as amended (5 U.S.C. § 552); 5 U.S.C. § 301; and 38 U.S.C. § 501; FOIA Improvement Act of 2016, Pub. L. No. 114-185.

PURPOSE(S) OF THE SYSTEM: The system is maintained for the purpose of processing an individual's record request made under the provisions of the Freedom of Information and Privacy Acts. These records are also used by VA to prepare reports required by the Freedom of Information and Privacy Acts to the Office of Management and Budget and the Department of Justice. The proposed system of records will assist the Department of Veterans Affairs in carrying out its responsibilities under the Freedom of Information and Privacy Acts. The records maintained in the proposed system can originate in both paper and electronic format.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains FOIA records and related correspondence on individuals who have filed with VA:

- a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. § 552), including requests for review of initial denials of such requests.
- b. Requests under the provisions of the Privacy Act (5 U.S.C. § 552a) for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.
- c. All persons who have requested records from VA under the provisions of the Freedom of Information Act (FOIA); all persons whose requests for records have been referred to VA by other Federal agencies; and all persons who have submitted appeals to the Secretary of VA under the provisions of the FOIA.
- d. All persons about whom information has been requested under the provisions of the FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agency records include all documents or records created or obtained by an agency of the government that are in an agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control: The intent of the creator of the document to retain control over the record; the ability of the agency to use and dispose of the record as it sees fit; the extent to which agency personnel have read or relied upon the document; and the degree to which the document was integrated into the agency's record systems or files.

Information maintained by an entity pursuant to a Government contract for a VA component for the purposes of records management is considered in the VA

component's possession. Records created by an agency employee during employment, including emails, may be either agency records or personal files.

This system contains correspondence and other documents related to requests made by individuals to VA for:

- a. Information under the provisions of the Freedom of Information Act (5 U.S.C. § 552), including requests for review of initial denials of such requests.
- b. Information under provisions of the Privacy Act (5 U.S.C. § 552a) and requests for review of initial denials of such requests made under VA's Privacy Act regulations regarding requests for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.
- c. Name, home address, telephone number, email address, FOIA case numbers assigned to individual cases and appeals, FOIA requests and appeals, responses to requests (including unredacted and redacted responsive records), determinations of appeals, correspondence with requesters and with other persons who have contacted VA in connection with requests or appeals other than requesters or other memoranda, and correspondence in connection with requests or appeals.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the following: requests and administrative appeals submitted by individuals and organizations pursuant to the FOIA and Privacy Acts; VA personnel assigned to handle such requests and appeals; Agency records searched and identified as responsive to such requests and appeals; and requests referred by Agencies or other entities concerning VA records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING
CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

1. Congress

VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data Breach Response and Remediation, for VA

VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data Breach Response and Remediation, for Another Federal Agency

VA may disclose information to another Federal agency or Federal entity when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement

VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in

nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. § 5701.

5. DOJ for Litigation or Administrative Proceeding

VA may disclose information to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

- (a) VA or any component thereof;
- (b) Any VA employee in his or her official capacity;
- (c) Any VA employee in his or her official capacity where DOJ has agreed to represent the employee; or
- (d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. Contractors

VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. OPM

VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. EEOC

VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. FLRA

VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices; the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. MSPB

VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. NARA

VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. OMB

VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic data are maintained on Direct Access Storage Devices at AINS Inc., 1355 Piccard Drive, Rockville, Maryland. AINS Inc. stores registry tapes for disaster back up at the storage location. Registry tapes for disaster back up are also maintained at an off-site location. VA Central Office and VA field facilities also maintain electronic data.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by FOIA case number, and/or name of requester.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. Agencies must dispose of records on managing information access and protection activities after three years but may retain such records longer if needed for business use; records documenting policies and procedures involving agency-wide responsibilities for FOIA, PA, and classified documents must be scheduled for disposal on an agency-specific schedule. Agencies must dispose of general request files involving requests for information with no need for administrative action, policy decision, or special complications or research when ninety days old but may retain such files longer if required for business use. Agencies must dispose of case files created in response to requests for information under FOIA or PA either six years after the final agency determination or three years after final adjudication by the courts, whichever is later, but retain them longer if required for business use. These retention and disposal statements are pursuant to the National Archives and Records Administration (NARA) General Record Schedules: 4.2 Information Access and Protection Records, Items 001, 010, and 020.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

This list of safeguards furnished in this System of Records is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information.

All records are maintained in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information, including protection from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features.

Authorized personnel are required to take annual VA mandatory data privacy and security training. Access to data storage areas is restricted to authorized VA employees or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. File areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Contractors and their subcontractors who access the data are required to maintain the same level of security as VA staff. Access to electronic files is controlled by using an individually unique password entered in combination with an individually unique user identification code.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records maintained under his or her name may write or visit the nearest VA facility or write to their regional VA Public Liaison/FOIA officer listed at

https://www.va.gov/FOIA/docs/Updated_Documents/POC/VACOCentralOffice.pdf.

CONTESTING RECORD PROCEDURES:

(See "Record Access Procedures above.")

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where the request or appeal was submitted or to the Director, FOIA Service (005R1C), 810 Vermont Avenue, NW, Washington, DC 20420.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, VA hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records of which they are a part.

HISTORY: Citation(s) to the last full Federal Register notice is 80 FR 68618 published on 11/05/2015.

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